

## **State Allocation Board Implementation Committee**

**June 1, 2001**

### **Implementation of Senate Bill 2066**

#### **BACKGROUND**

Senate Bill (SB) 2066, Chapter 590, Statutes of 2000 includes four distinct provisions in relation to school facilities which include:

1. A provision is added to the School Facility Program (SFP) that would provide for penalties on school districts that falsely certify information to the Office of Public School Construction (OPSC) or the California Department of Education (CDE). Attachment A will provide general information and policy specifics relative to the implementation of this new provision. Attachment B will provide proposed regulations for the implementation of this new provision.
2. A provision has been added that allows school districts that have eligibility for new classrooms under the SFP to also be eligible for the same number of portable classrooms under the State Relocatable Program. Formal revisions to the State Relocatable Program Handbook and forms have been made to account for this change.
3. A provision was added that authorizes money not needed for the purchase of portable classrooms to be transferred from the State School Building Aid Fund (State Relocatable Program Fund) to either the State School Facilities Fund (SFP Fund) or State School Deferred Maintenance Fund. This provision needs no clarifying policy language and can be implemented at the will of the Board after January 1, 2001.
4. Eliminates a statutory requirement that asbestos related contractors register with the OPSC since they currently are registered and monitored by the California Department of Industrial Relations, Division of Occupational Safety and Health. This provision also needs no clarifying policy since this requirement to register with the OPSC will be deleted. The OPSC will provide this information to school districts in the Advisory letter and web site.

#### **RECOMMENDATION**

Approve the attached policy and proposed regulations for submittal to State Allocation Board (SAB) for implementation of SB 2066.

## **Attachment A**

### **BACKGROUND**

The current SFP utilizes six different forms that capture a myriad number of certifications relating to program requirements, eligibility data, funding requests and accounting data. At present, the OPSC randomly verifies self-certified information and rejects applications from being processed to the SAB if they contain errors and or omissions. In addition, certain falsely certified information discovered during a Substantial Progress and/or Expenditure Audit can ultimately lead to recissions, reductions to costs incurred and audit exceptions.

SB 2066 provides prescriptive remedies when falsely certified information, hereinafter called “material inaccuracies” are encountered depending on whether the apportionment has been released or not. Also, once material inaccuracies are encountered, the district will be precluded from certifying information to the OPSC for a period of up to five years and will have to file applications utilizing an alternative method during that period.

### **PROPOSED POLICY FOR SB 2066**

School districts, as defined in Education Code 17070.15 (h), will be continue to file for eligibility and funding approvals under the SFP utilizing self-certified information. However, once potential material inaccuracies are encountered, the OPSC will report to the SAB and the appropriate remediation will occur (please refer to the attached proposed regulation 1859.104.1).

#### **Penalties**

After the OPSC reports to the SAB and the Board determines that material inaccuracies have occurred, appropriate penalties will be assessed for projects that have not received an apportionment (See proposed regulation 1859.104.2), projects that have received an apportionment but no fund release (See proposed regulation 1859.104.4) and projects that have received an apportionment and fund release (See proposed regulation 1859.104.3). These penalties are essentially prescribed in law and further defined in the proposed regulations.

#### **Alternative Application Filing Process**

In addition to the above penalties, school districts will be prohibited from filing under the normal application filing procedures that utilizes, in many cases, self-certified information (See proposed regulation 1859.104.5) and will instead be required to file under a more stringent application review process (See proposed regulation 1859.104.6).

#### **Alternative Project Filing Fees**

Lastly, the law directs that school districts shall be billed for any additional costs associated with the alternate application review process. The OPSC will charge an amount not to exceed \$30.00 per hour (average analyst/auditor cost per hour) for any additional analysis and review time associated with the alternative project filing process (See proposed regulation 1859.104.7).

### **IMPLEMENTATION OF SB 2066**

SB 2066 does not have an urgency clause and will therefore need defining regulations prior to adoption of any policies. The OPSC will notify school districts of the ramifications of providing false self-certifications when appropriate.

## **Attachment B**

### **Proposed Regulation Changes for SB 2066**

Amend to include: **Section 1859.2. Definitions.**

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“Material Inaccuracy” means any falsely certified eligibility, funding or accounting related information made by school districts, architects or design professionals.

Add: **Section 1859.104.1. Material Inaccuracy Reports.**

Any falsely certified information made by a school district, architect or design professional discovered during eligibility processing, funding processing, substantial progress audit as outlined in Sections 1859.105, and 1859.105.1 or expenditure audit as outlined in 1859.106, shall be reported at the next regularly scheduled Board meeting for appropriate penalties.

Add: **Section 1859.104.2. Material Inaccuracy Penalties For Projects Without Apportionments.**

A school district project with a material inaccuracy discovered prior to an apportionment, but during an eligibility or funding review shall be subject to the penalties prescribed by Section 1859.104.5.

Add: **Section 1859.104.3. Material Inaccuracy Penalties For Projects With Fund Releases.**

A school district project that has received an apportionment and fund release shall be required within five years to repay a penalty amount that is proportionate to the increased eligibility or additional funding derived as a result of a material inaccuracy plus interest as prescribed in Education Code Section 17070.51 (b)(1). The Board shall establish a repayment schedule that will allow prudent financial reserves and not jeopardize the school district’s financial status, but not to exceed five years. The school district shall also be prohibited from self-certifying prospective project information in accordance with Section 1859.104.5 after the Board has deemed that a material inaccuracy has occurred.

Add: **Section 1859.104.4. Material Inaccuracy Penalties For Projects With Apportionments But No Fund Releases.**

A school district project that has received an apportionment but has no funds released shall have that apportionment reduced commensurate with the increased eligibility or additional funding received as a result of the material inaccuracy. The school district shall also be prohibited from self-certifying prospective project information in accordance with Section 1859.104.5 after the Board has deemed that a material inaccuracy has occurred.

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**Add: Section 1859.104.5. Self-Certification Prohibition.**

When the Board determines that a material inaccuracy has occurred, after the assessment of appropriate penalties, the following will occur:

- (a) For projects that meet the circumstances outlined in Section 1859.104.2, the school district will be prohibited from self-certifying prospective project information for a period of five years after the Board has determined that a material inaccuracy has occurred. These projects shall be filed pursuant to the provisions of Section 1859.104.6.
- (b) For projects that meet the circumstances outlined in Section 1859.104.3, the school district will be prohibited from self-certifying prospective project information for a period of up to five years or until repayment of the entire penalty after the Board has determined that a material inaccuracy has occurred. These projects shall be filed pursuant to the provisions of Section 1859.104.6.
- (c) For projects that meet the circumstances outlined in Section 1859.104.4 the school district will be prohibited from self-certifying prospective project information for a period of up to five years after the Board has determined that a material inaccuracy has occurred. These projects shall be filed pursuant to the provisions of Section 1859.104.6.

**Add: Section 1859.104.6. Alternative Project Filing Process For School Districts That Have Projects With Material Inaccuracies.**

On projects that have been deemed to have material inaccuracies, all subsequent school district projects shall be required to conform to an alternative filing process that will require additional OPSC review and analysis prior to any approval. Many application data elements that were previously self-certified and accepted by the OPSC without documentation will now require substantiation review and approval prior to the application being approved. The alternative project filing process shall include:

- (a) New construction eligibility updates or eligibility applications will require submittal of form SAB 50-01 with a separate delineation of what type and number of students by each category were included in Part A and B of the form as well as the latest fall CBEDS report. When Part E is utilized to augment enrollment, submittal of a recently approved subdivision map will be required.
- (b) Only new construction applications where school districts meet the circumstances outlined in Section 1859.104.2 may require submittal of form 50-02, documentation such as leases and contracts to support the Part I classroom inventory, supporting documentation and or reports for the substantial enrollment requirement and operational grant figures detailed in Part III of the form.
- (c) Only modernization applications where school districts meet the circumstances outlined in Section 1859.104.2 require submittal of form 50-03, supporting documentation for classrooms and facilities that are declared over 20 for portables or 25 years old for permanent space and the latest fall CBEDS report to support the enrollment at the project site.

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- (d) New construction funding applications will require submittal of form SAB 50-04 and documentation to support:

Any architect or design professional certifications, use of grant requests, how many sixth graders are in a sixth through eighth grade school, geographic percent factors, new and small size school projects, urban impacted sites, DTSC fees, hazardous waste removal costs, establishment of a restricted maintenance account, compliance with laws pertaining to the construction of school buildings, all contracts complied with statutory requirements and that the district's matching share has been expended, deposited or will be expended prior to notice of completion,

- (e) Modernization funding applications will require submittal of form SAB 50-04 and documentation to support:

Any architect or design professional certifications, geographic percent factors, small size school projects, handicap access and fire code requests, elevators, urban impacted sites, establishment of a restricted maintenance account, compliance with laws pertaining to the modernization of school buildings, all contracts complied with statutory requirements and that the district's matching share has been expended, deposited or will be expended prior to notice of completion,

- (f) New construction and modernization adjusted grant fund releases will only occur after submittal of form SAB 50-05, construction contracts that show at least 50 percent of the work included in the plans and specifications are under contract, documentation to support the district funding sources and that the district either has or will have their funding share available for the project.
- (g) Substantial Progress requirements detailed in Section 1859.105 and 1859.105.1 must be substantiated and will be verified as appropriate by the OPSC.
- (h) Expenditure reports will information will need to be supported by contracts, invoices and warrants upon OPSC request.

**Add: Section 1859.104.7. Alternative Project Filing Process Fees For School Districts.**

With the exception of school districts that meet financial hardship provisions as prescribed in Section 1859.81, the OPSC shall charge any school district that has a project with material inaccuracies an amount not to exceed \$30.00 per hour for any additional processing and review time spent on a modernization or new construction project filed under the auspices of Section 1859.104.6. The school district shall receive monthly billings and upon payment by the school district, the amount shall be deposited in the State School Facilities Fund for apportionment by the Board.